WORTH KNOWING ABOUT

The Danish Transfer Pricing Rules

TAX AND VAT
March 2022

The Danish tax rules require that affiliated companies transact with each other on the same terms and conditions that they apply to unrelated parties. This is known as the "arm's-length principle". In order to comply with this requirement, it is therefore necessary to have established internal rules for settlements etc. - transfer pricing - between the companies.

Introduction

The Danish transfer pricing rules requires that affiliated companies transact with each other on the same terms and conditions that they apply to unrelated parties. This is known as the "arm's-length principle". To comply with this requirement, it is therefore necessary to have established internal rules for settlements etc. - transfer pricing - between the companies.

Just as in many other countries, there are rules in Denmark which require enterprises to furnish information about intragroup transactions to the tax authorities. In many cases they must also produce written documentation that such transactions are carried out in accordance with the arm's-length principle.

The Danish rules requires mandetory submission

With the adoption of Bill L28/2020 on 3 December 2020, Danish companies must submit the Master file and Local file to the Danish Tax Agency within 60 days after the deadline for submission of the corporate income tax return. The change applies to tax years starting January 1, 2021 or later. Submission of transfer pricing documentation has therefore become mandatory.

"With the adoption of Bill L28/2020 on 3 December 2020, Danish companies must submit the Master file and Local file."

The new rules contain an exemption for purely domestic controlled transactions which is a facilitation of the rules. However, the domestic transactions must still be in accordance with the arm's length principle, cf. Ligningslovens § 2. The Danish tax agency can still request the necessary documentation for assessing the arm's length nature of the transaction.

Another important aspect of the new rules is the increased focus on database searches and benchmark studies which the Danish tax agency will require to a much greater degree than before.

Who is covered by the rules and documentation requirements

A company must prepare a transfer pricing documentation in Denmark if:

- the company is a part of a Group that employs 250 or more employees or
- has a revenue exceeding DKK 250 million and a balance sheet sum above DKK 125 million
- the company have intercompany transactions with companies etc. located outside the EU/EEA or in countries with which Denmark does not have a double-taxation agreement, regardless of the size of the group.

The thresholds are measured at a group level.

The rules requires the submission of a Master file and Local file. The Master file should provide an overall overview of the Group's activities and include information regarding the following aspects:

- the organizational structure
- geographic locations of operations
- the main valuechain and drivers of business profit
- destription of the Group's business activities
- intangible assets
- information regarding the financing of the Group.

While the Master file focus on the Group as a whole the Local file should provide information about the specific entity and its controlled transactions with affiliated companies. The Local file in should provide information regarding the following aspects:

- management structure and lines of reporting of the local entity
- intercompnay transcations executed during the year under review
- important intercompany agreement
- which transfer pricing methods are used and how these methods are applied
- local entity financials

The preparation of the transfer pricing documentation is a time-consuming process, hence, it is our recommendation that the relevant companies prioritise their documentation so that they are compliant with the Danish transfer pricing rules. Furthermore, we recommend that all companies should be aware if their information have been notified correctly to the Danish tax agency. If the Danish tax agency receives the wrong information the company could potentially receive a fine.

Penalties for lacking or noncompliant documentation

Penalties for not submitting or submitting an nonsatiscatory transfer pricing documentation could potentially amount to fines of up to DKK 250,000 per company, per year plus 10 % of a potential income adjustment made by the Danish tax agency.

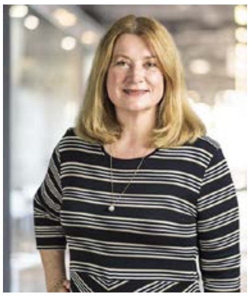
Compliant preparation and submission of the Master File and Local file is therefore essential as protection from significant penalties and shifts in the burden of proof in tax disputes relating to transfer pricing.

Country-by-Country Reporting

Groups with a consolidted turnover above DKK 5.6 billion must submit a country-by-country (CbC) report. Notification on who will submit the report must be sent before the end of the income year the report covers.

DO YOU HAVE ANY QUESTIONS? PLEASE CONTACT

Arne Riis
Partner, Tax
Tel.: +45 39 15 53 02
ari@bdo.dk



Vicki From Jørgensen
Partner, Tax
Tel.: +45 39 15 52 96
vijor@bdo.dk